

RECEIVED

AUG - 2 1996

Federal Communications Commission
Office of Secretary



SCHOOL OF LAW

HOWARD UNIVERSITY

2900 VAN NESS STREET, N.W.
WASHINGTON, D.C. 20008

August 2, 1996

William F. Caton, Acting Secretary
Federal Communications Commission
1919 M Street, N.W. Room 222
Washington, D.C. 20554

DOCKET FILE COPY ORIGINAL

Re: *Federal -State Joint Board on
Universal Service -- CC Docket
No. 96-45*

Dear Secretary Caton:

Enclosed please find an original and 4 copies of the Comments of Patricia M. Worthy, in the above-referenced proceeding.

Respectfully submitted,

A handwritten signature in cursive script that reads "Patricia M. Worthy".

Patricia M. Worthy
Associate Professor
Howard University School of Law
2900 Van Ness Street, N.W.
Washington, D.C. 20008
(202) 806-8061

No. of Copies rec'd
List ABCDE

044

RECEIVED

AUG - 2 1996

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

Federal Communications Commission
Office of Secretary

In The Matter of)
)
Federal-State Joint Board) CC Docket No. 96-45
on Universal Service)
)

COMMENTS OF PATRICIA M. WORTHY,¹ Private Citizen

On March 8, 1996, the Federal Communications Commission ("FCC" or "Commission") issued its *Notice of Proposed Rulemaking and Order Establishing Joint Board* ("NPRM") as the vehicle to examine the implementation of Section 254 of the Telecommunications Act of 1996 ("1996 Act"). In response to the NPRM, Comments and Reply Comments were filed on April 12, 1996 and May 7, 1996, respectively, by numerous representatives of the telecommunications industry and state regulatory commissions. However on July 3, 1996, the FCC issued a *Public Notice* indicating that at the request of the Federal-State Joint Board staff, additional comments on specific issues were being solicited. Pursuant to the *Public Notice*, Patricia M. Worthy respectfully submits the following comments

¹ These comments contain excerpts from a forthcoming publication.

SUMMARY

20. SHOULD THE COMMISSION USE SOME EXISTING MODEL TO DETERMINE THE DEGREE TO WHICH A SCHOOL IS DISADVANTAGED? WHICH ONE? WHAT, IF ANY MODIFICATIONS SHOULD THE COMMISSION MAKE TO THAT MODEL?

We caution the FCC not to rely solely on providing low-income consumers access to the telecommunications infrastructure through public schools and libraries because of budget constraints and reduced resources.

71. SHOULD THE NEW UNIVERSAL SERVICE FUND PROVIDE SUPPORT FOR THE LIFELINE AND LINKUP PROGRAMS, IN ORDER TO MAKE THOSE SUBSIDIES TECHNOLOGICALLY AND COMPETITIVELY NEUTRAL? IF SO, SHOULD THE AMOUNT OF THE LIFELINE SUBSIDY STILL BE TIED, AS IT IS NOW, TO THE AMOUNT OF THE SUBSCRIBER LINE CHARGE?

We propose the establishment of a national lifeline program to assist low-income residential customers. The program would complement the existing Link-Up program. It would be a needs-based, automatically-instituted, flat-rate service. Need would be determined on the basis of qualifications or participation in one of the several federal benefit programs. We further propose that the new lifeline program will be restricted to heads of households with dependents for those individuals under the age of sixty-five (65).

The federal lifeline program would constitute national regulatory standards. **It would, however, allow a State or the district of Columbia, to adopt universal service regulations not inconsistent with the FCC rules but that would allow States the flexibility to adopt rules that ensure additional benefits and opportunities to achieve and preserve universal service.**

INTRODUCTION

The telecommunications infrastructure in this country, it is promised, will constitute a seamless web of communications networks, computers, and databases that will provide the public with access to vast amounts of information. A communications system that will link homes, businesses, and schools in a multimedia, interactive network, and thus will provide an exchange of voice, data, and video images. A resource, it is claimed, that will foster the ability of every citizen to access information and communicate with each other easily and reliably, anywhere, anytime, and in any medium.

The "information superhighway" will transform the way we exchange and obtain information and will alleviate the constraints of geography, and economic status. It is explained that the advanced network infrastructure will create employment opportunities and foster economic growth and services; improve education for children and adults; increase the accessibility and quality of medical services; and make information readily available to businesses and individuals alike, regardless of economic position, or location.² Thus, the telecommunications infrastructure is expected to improve the quality of life for *every* citizen.³

² See Remarks of Vice President Al Gore, 2 COMMLAW CONSPECTUS 1 (Special Issue) (1994).

³ One of the stated goals of the Administration is to ensure "universal" access to a minimum level of information services, so that all Americans can have easy, affordable access to advanced communications an information services, regardless of income. See NATIONAL TELECOMMUNICATIONS AND INFORMATION ADMINISTRATION, U.S. DEPT. OF COMMERCE, THE NATIONAL INFORMATION INFRASTRUCTURE: AGENDA FOR ACTION 8 (Sept. 15, 1993), reprinted in COMMLAW CONSPECTUS 23, App. A at 25 (Special Issue) (1994).

However, the National Telecommunications and Information Administration (NTIA) study, *Falling Through The Net*,⁴ indicates that urban central cities consistently have lower telephone penetration rates than rural areas by income,⁵ age,⁶ and educational achievement.⁷ The study also demonstrates variances in penetration rates between urban areas and central cities, and among households within central cities. For example, central city households earning less than \$10,000 have a telephone penetration rate of 79.8%, while central city households with incomes over \$75,000 have a penetration rate of 98.8%. Furthermore, for low-income households, the central city penetration rate is 78.8%, while the overall urban penetration rate is 81.0%. Moreover, an earlier FCC study on telephone penetration rates revealed that 94.2% of American households had telephone service. However, less than 73% of low-income households (below an annual income of \$5,000) had telephone service, while low-income African-American households had a subscribership rate of merely 65.5%.⁸

Of equal importance, the NTIA study reveals that for the near-poor households, having income between \$10,000 and \$15,000, computer penetration rates reach 7% in rural areas and

⁴ *Falling Through the Net: A Survey of the "Have Nots" in Rural and Urban America*, U.S. Department of Commerce, National Telecommunications and Information Administration (July 1995).

⁵ *Id.* at Table 1.

⁶ *Id.* at Table 7.

⁷ *Id.* at Table 10.

⁸ *The Monitoring Report*, CC Docket No. 87-339, prepared by Staff of the Federal-State Joint Board, CC Docket No. 80-286, May 1994 at p. 32.

9.3% in central cities, but modems penetrate only 1.8% and all near-poor rural households and 4.6% of all near-poor central city households.⁹ While in contrast, almost 50% of households earning at least \$50,000 a year have a computer, with the rate rising to more than 60% for those households earning \$75,000 or more.¹⁰

Traditionally, Congress and the Commission have interpreted "public convenience, interest, or necessity," to mean the universal provisioning of at least one telephone with private line service in every home in America.¹¹ The FCC has identified "[t]he preservation of universal service" as "a basic goal of [the agency],"¹² with its primary regulatory vehicles for implementing *universal service* being "Link-Up America" and "Lifeline."¹³ Congress has, however, recast the statutory requirements of "public convenience" and "necessity" by expanding the underlying principles of *universal service*. Section 254 provides for more than a telephone in each home, but instead access to "telecommunications and information services" for consumers in all regions of

⁹ NTIA at Table 2. Interestingly, the study reveals that African-Americans have the lowest computer penetration rates in all geographic areas, with only about 1 in 10 African-American households owning a computer. *Id.*

¹⁰ *Id.* A study conducted by EDS Management Consulting services, *PC's Becoming Everyday Appliances?*, found households with incomes exceeding \$50,000 were 2.5 times more likely to have a computer than households earning less than \$25,000. By education, the EDS study found more than 50% of households headed by a college graduate had a computer, against approximately 20% of households headed by individuals having high school educations only.

¹¹ See *Staff of the Federal-State Joint Board, Monitoring Report*, CC Docket No. 80-286, at 10-11 (July 1990).

¹² MTS and WATS Market Structure, 4 F.C.C.R. 3634, 3634 (1989).

¹³ *Id.* at 3634 & n 1.

the Nation including **low-income** consumers. ¹⁴

20. SHOULD THE COMMISSION USE SOME EXISTING MODEL TO DETERMINE THE DEGREE TO WHICH A SCHOOL IS DISADVANTAGED? WHICH ONE? WHAT, IF ANY MODIFICATIONS SHOULD THE COMMISSION MAKE TO THAT MODEL?

We have no particular recommendations as to the validity or viability of the existing models in determining the appropriate funding levels. However, we caution the Commission in focusing its *primary* efforts on ensuring universal access to the telecommunications infrastructure through public schools and libraries. Funding levels for Title I programs have decreased, steadily over the last several years and schools are already facing substantial reductions in staff and resources.¹⁵ Moreover, county and city governments, under severe financial constraints, are having to close neighborhood libraries, or in the alternative, drastically reduce staff and resources.¹⁶

¹⁴ 1996 Act, sec. 254(b).

¹⁵ For example in Roanoke, Virginia, it was recently reported that federal Title I money has been reduced, such that after-school programs had to be reduced substantially and the number of children lowered from 318 to 180. The program was also trimmed from three to two afternoons a week to save costs. Joel Turner, *The Roanoke Times & World News*, Jan. 25, 1996 at C1.

¹⁶Moreover, education experts are cautioning that access to computers in schools alone will be insufficient to provide the levels of technology proficiency needed in the new information environment. Dave Moursund, Director of the International Society for Technology in Education, recently stated, "lots of people have concluded that schools alone won't be able to cope with the challenge of steering kids toward a mastery of information technology." Keith Henderson, *The Christian Science Monitor*, Oct. 31, 1994 at p.12.

QUESTION 71. SHOULD THE NEW UNIVERSAL SERVICE FUND PROVIDE SUPPORT FOR THE LIFELINE AND LINKUP PROGRAMS, IN ORDER TO MAKE THOSE SUBSIDIES TECHNOLOGICALLY AND COMPETITIVELY NEUTRAL? IF SO, SHOULD THE AMOUNT OF THE LIFELINE SUBSIDY STILL BE TIED, AS IT IS NOW, TO THE AMOUNT OF THE SUBSCRIBER LINE CHARGE?

The present Link-Up and Lifeline programs are a good *first* step in attempting to achieve universal service among the low income. However, given the new Congressional mandate, the results of the FCC's monitoring reports, which indicate telephone penetration rates for the low-income are below 70%, are *prima facie* evidence that alternative approaches are necessary. To that end, we hereby propose the adoption of a new model that will provide national lifeline rates and services for low-income customers:

Program Design:

We propose the establishment of a national lifeline program, **LifeLine-America**, to assist low-income residential customers. The program would complement the existing Link-Up program. It would substitute aspects of the Lifeline-Assistance program, because the program would prohibit the application of any additional federally imposed charges. "LifeLine-America" would be a needs-based, automatically-instituted, flat-rate service. Need would be determined on the basis of qualifications or participation in one of the several federal benefit programs. We further propose that the new lifeline program will be restricted to heads of households with dependents for those individuals under the age of sixty-five (65).

Eligibility Criteria:

We propose that heads of households or individuals over the age of 65 that participate or qualify for any program such as Food Stamps, Aid to Families with Dependent Children, or the Low-Income Home Energy Assistance Program be *automatically* certified to participate in the program.¹⁷

Proposed Services:

Those services we propose to be available under the "Lifeline-America" program include (1) a flat-rate with a 120 free call allowance, (2) touchtone, (3) access and charges for emergency services, (4) access to Operator Services and a free 12 call per month usage allowance, (5) access to all available long distance carriers, (6) a white pages listings (business and residential), plus a directory, and (7) blocking for 900, 976 and 976-like services, as well as free toll restriction blocking.¹⁸

Proposed Low-Income Rates:

We hereby propose the FCC establish a maximum rate to be charged low income consumers for the range of universal services as described above by all of the States. We suggest two possible ways to determine the maximum rate. In the first instance, the rate could be based on the average of the lifeline rates currently in existence among the states. The Federal-State Joint Board could compile this information which should be readily available. As a second or alternative approach, the maximum rate could be based on a percentage of the minimum wage. Using FCC and the U.S. Bureau of Labor Statistics (BLS) data, we have estimated that

¹⁷ We thus concur with Comments filed by the Montana Public Service Commission (at p.5) and the New York State Department of Public Service (at p. 14).

¹⁸ See Comments filed by the Staff of the Public Utilities Commission of Ohio at 4.

percentage to be between 0.9% and 1.0 %¹⁹ This would yield a maximum rate of between \$7.15 and \$8.93 per month.

Under this proposal, the States would be allowed the flexibility of establishing lower rates as they deem necessary, in light of their costs of living and other non-rate factors. This is a critical element in our proposal, since it is clear that there are wide variations among states and regions as well as within cities and urban areas. There must also be a mechanism to ensure these variations are taken into account.

For example, as indicated in the Reply Comments filed by the D.C.PSC, experience in the District of Columbia is especially illustrative in light of the fact that it is the *only* purely urban jurisdiction for which statistically reliable data are available. Over the last 11 years, the District has had a telephone lifeline program called, Economy II, in an effort to improve the telephone penetration rate. That program currently offers a \$1.00 monthly basic rate and unlimited local calling for low income senior citizens and a \$3.00 monthly basic rate and 120 free call allowance

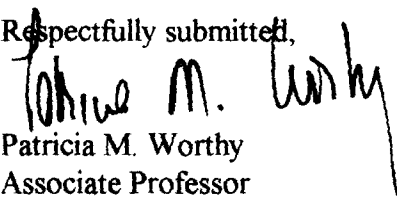
¹⁹ As noted in Southwestern Bell's Comments, 0.7 percent of median household income is spent on basic local exchange service and 2-2.5% of median income is spent on all telecommunications services (p. 11). Data from the BLS' Consumer Expenditure Survey indicate the lower the income, the higher the share of income is spent on telecommunications services. Unfortunately, they do not have expenditure data on basic local service by income levels, thus a proxy had to be established. We began with the FCC data as found in Table 9 of the publication entitled *Trends in Telecommunications*. It shows local service charges accounting for 31 percent of total telephone expenditures in 1994. The 31% share was applied to the BLS telecommunications expenditure data for two low income categories, which also correspond rather closely to the LIHEAP criteria - households with \$20,000 in income and 4 persons and households with \$10,000 in income and one person. Thus, we calculated the share of income spent on basic local service to be 0.8% for households with \$20,000 and 4 dependents and 0.98% for households with incomes of \$10,000 and one dependent.

for heads of households, unde age 65, with dependents. Over the years, the rates have been adjusted as the telephone penetration rate changed. In the last few years, as the telephone penetration rate fell below 90%, the D.C.PSC supplemented the Economy II program with another program, called Message B, which enables customers to avoid disconnection by paying \$7.47 per month with a 60 free calls allowance in addition to a regular payment plan for any arrearages. Economy II customers on Message B pay the lower \$1.00 and \$3.00 Economy II rates as are applicable. Together, these programs have been successful in reaching over 17,000 households and in the telephone penetration rate rising to its current 92.5% level, but this is still below the national average of 93.8%. In the future, it will be even more imperative for the D.C.PSC to establish mechanisms to ensure the low-income customers in the District have an opportunity to participate in telecommunications advances. Other States will have similar needs.

CONCLUSION

Patricia M. Worthy respectfully request that the Joint Board consider the recommendation to establish a national lifeline program for low-income consumers.

Respectfully submitted,


Patricia M. Worthy
Associate Professor
Howard University School of Law
Washington, D.C. 20008
(202) 806-8061